In The
SUPREME COURT OF THE UNITED STATES
October Term, 1951

No. 724

THE HAMILTON FOUNDRY & MACHINE COMPANY,

Petitioner,

vs.

INTERNATIONAL MOLDERS & FOUNDRY WORKERS UNION OF NORTH AMERICA, (AFL),

and

LOCAL No. 68, INTERNATIONAL MOLDERS & FOUNDRY WORKERS UNION OF NORTH AMERICA (AFL),

Respondents.

BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

OPINIONS BELOW

The opinion of the District Court (R 291-302) is reported in 95 F. Supp. 35. The opinion of the Court of Appeals for the Sixth Circuit (R 319-329) is reported in 193 F (2d) 299.

JURISDICTION

The judgment of the Court of Appeals for the Sixth Circuit was entered on December 11, 1951 (R 318). The Order On Petition for Rehearing was filed January 23, 1952 (R 353).

Petitioner invokes the jurisdiction of this Court under 28 U. S. Code Section 1254 (1).

QUESTIONS PRESENTED

The petitioner has not accurately stated the questions that are, or can be, presented to the Court in this case. Actually there are but two questions presented and one of those is purely collateral.

The principle question presented is: Was the jury's verdict rendered in this case supported by substantial evidence?

The collateral question presented is: Does the Ohio Statute of Frauds (Ohio General Code, Section 8621), providing that no action may be brought upon an agreement that is not to be performed within a year from the making thereof unless signed by the party to be charged, apply in an action brought under Section 301 (a) of the Labor Management Relations Act, 1947 (29 U.S.C. 185) for breach of an alleged oral contract that was not to be performed within a year from alleged making thereof:

STATEMENT OF THE CASE

(a) The Subject Matter Of The Case:

This case was brought under Section 301 (a) of the Labor Management Relations Act, 1947 (29 U.S.C. 185).

It involves an alleged breach of a no-strike clause in an alleged oral collective bargaining contract which Petitioner claims each of Respondents had entered into but which Respondents contend was never agreed to nor entered into by either of them.

(b) The Pleadings:

The case was initiated on April 26, 1949, when Petitioner filed a complaint against both Respondents alleging that each of them had entered into a contract on or about March 26, 1949 with Petitioner, and that Respondents had breached that contract (R 1-4). On July 12, 1949 Petitioner filed a More Definite Statement of Claim (R 6-7) to which was attached as "Exhibit A" a written document alleged by Petitioner to be the contract it was relying upon for its cause of action.[1] (A copy of Exhibit A was introduced in evidence as Exhibit 3, R 7, 76).

In the probable absence of a copy of this exhibit being included in the record before this Court, it is necessary to set out its pertinent parts. "Exhibit A" states among other things –

> (1) that it is a contract between the Hamilton Foundry and Machinery Co. and Local 68, International Molders and Foundry Workers Union of North America. (Pg 1);

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[1] This Exhibit A apparently has not been filed with this Court, as required in Rules 38 (1) and (7), as no copy of Exhibit A, nor any exhibit, received in evidence during the trial of this case is included in the copy of the transcript of the record served on Respondents. Further, there is no indication in the record that the exhibits have been transmitted to the Court in their original form by Petitioner. (Rule 10 (4)). Respondents, in making record reference to exhibits as required in Rule 27 (3), can only refer to original exhibits as transmitted to the Court of Appeals for the Sixth Circuit. (R, 310).

(2) that is was entered into as of the 30th day of March, 1949, effective March 28, 1949. (Pg 1);

(3) that the company would increase the day work rates 5¢ per hour upon the signing of the agreement. (Pg 3);

(4) that it would be in effect until March 27, 1950 and would renew for each succeeding year thereafter in the absence of notice to the contrary. (Pg 18).

This "Exhibit A" (Ex 3) is signed by Peter E. Rentschler on behalf of the Petitioner, but is not signed by any one on behalf of Respondent Local 68 although it designates the names and places for the committee to sign on behalf of Local 68. (Pg 19). Nor is Exhibit A signed by Respondent International Union and, indeed, the exhibit does not even contain a space for any one to sign on behalf of the International Union. (Pg 19).

After the filing of this More Definite Statement of Claim, each of Respondents filed a separate answer setting forth four defenses as follows:

(1) a denial of entering into the alleged contract;

(2) a lack of consideration for the alleged contract;

(3) that the Court had no jurisdiction over the subject matter as Section 301 of the Labor Managment Relations Act is repugnant to Article III, Section II of the Constitution of the United States; and

(4) that the alleged contract was unenforceable by virtue of Section 8621 of the General Code of Ohio since the alleged contract was oral and could not be performed within a year from the alleged making thereof. (R 8-18).

Motions to Dismiss and For Judgment On the Pleading were made and denied (R 19-21).

The case came on for trial and, after its first witness had completed his testimony, Petitioner filed an Amended More Definite Statement Of Claim and therein, abandoned completely its original More Definite Statement Of Claim, wherein it was alleged that the agreement had been reduced to writing and presented to the members of the Union (R 6), and alleged that Petitioner was now relying on an oral contract (R 22). Attached to its Amended More Definite Statement Of Claim and made a part thereof was an Exhibit A, which Respondent then claimed contained the full terms and conditons of the alleged contract except for certain enumerated changes (R 22). This Exhibit A, attached to the Amended More Definite Statement Of Claim was the same written document, signed by Peter E. Rentschler on behalf of the company, that had been attached to the More Definite Statement Of Claim As Exhibit A (Exhibit 3 in evidence, R 23).

When Petitioner had rested its case, each of Respondents made a motion for an instructed verdict, and the reasons in support thereof were fully stated (R 130-135). The motions were denied (R 135) and Respondents proceeded with introduction of testimony to support their respective defenses. When all the evidence was in, Respondents' respective motions for an instructed verdict were renewed and denied (R 249). The matter went to the jury, which found against both Respondents in the amount of $37,500 (R 286).

Respondents then filed separate motions "To Set Aside Verdict And For Judgment For The Defendant In Accordance With Its Motion For A Directed Verdict And In The Alternative For A New Trial" (R 288-290).

The Court granted the motions for judgment and, in the alternative a new trial in the event of a reversal of final judgment (R 304-306).[2]

An appeal was taken to the United States Court of Appeals for the Sixth Circuit (R 307), which affirmed the lower Court (R 318). A petition for rehearing was filed (R 333, et seq) and overruled (R 353).

(c) Summary Of The Evidence:

The evidence submitted during the trial of the case, briefly summarized, establishes the following:

The Respondent Local 68 is a labor union which represents employees in some seven foundries in the area of Hamilton, Ohio (R 140). It is an affiliate of the Respondent International Union (Ex. 21, R 126, 127).

Since the year 1941 the Petitioner company had recognized the Respondent Local 68 as the bargaining representative of a unit of its foundry employees, and from that time through February 28, 1949 the Respondent Local 68 and the Petitioner had entered into and operated under written collective bargaining contracts (Exs. 10, 15, 16; R 89, 98, 99). In February of 1949 negotiations were commenced between Respondent Local 68 and Petitioner for a new contract for the year 1949-50 (Ex. 17, R 99; Ex. 8, R 83).

Throughout these negotiations the committee representing Local 68 made abundantly clear to Petitioner that it had but limited authority to negotiate for contract terms only; that neither it nor any of its members had any authority whatsoever to bind Respondent Local 68 to a contract; and that a contract could be entered into

[2] See Montgomery-Ward & Co. v. Duncan (1940), 311 U. S. 243; 61 S. Ct. 189, 85 L. Ed. 147.

only after the membership of Local 68 had accepted or ratified, by majority vote, any offer made by the company.[3] And admittedly the Petitioner acknowledged and accepted those conditions (Exs. 4, pgs 91-92, 126; Ex. 5, pgs 205, 211, 221, 223, 224, 271, 274, 301, 315, 316, 319; Ex. 6, pgs 3, 4, 34, 65, 66, 75, 83-84; Ex. 7, pgs 3, 4-5, 6, 8, 20, 46, 47; Ex. 8, pgs 2, 21, 61, 62, 63).

The principle issue in dispute during all of the negotiations was the Petitioner's absolute insistence that the union accept for the employees in its plant a new system of computing piece work rates, which admittedly would result in a lower return for the men, and the men's refusal to accept this condition (Ex. 5, pgs 134, 209, 318; Ex. 7, pgs 6-7, 10, 13; Ex. 8, pg 2).

At the conclusion of a negotiation meeting held on March 24, 1949, the committee agreed to submit the company's proposal, still containing the company's new system for computing piece work rates, to the employees of the company. who were members of Local 68, to ascertain if it would be acceptable to them although the proposal had been rejected by them at least twice before (R 141). It was also arranged that one of the committee members would 'phone the company Saturday morning, March 26, 1949, and report on the results of this meeting of the company's employees (Ex. 8, pg 98).

The meeting of the company's employees was held Friday night, March 25, 1949,[4] and the next morning,

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[3] The manner by which Respondent International Union could accept a contract was not mentioned during the negotiation meeting as, obviously, no one intended that the International Union should be a party to the contract.

[4] The respondents have consistently contended that evidence concerning this Friday night meeting is immaterial since admittedly it was not a meeting of Local 68 (R 64, 208-209).

Saturday, March 26, 1949, McCune, a member of the committee, telephoned the company to report on what occurred at this meeting. The Petitioner's witness, McDaniel, testified McCune stated the proposal had been accepted by the company's employees (R 64-65). McCune testified he told McDaniels the men had voted not to strike and, if the company wanted to put its new wage system into effect on Monday morning, the men would work under it and try it out (R165). It is admitted that the employees of Petitioner were dissatisfied with the company's new system of establishing piece rates as the men suffered reductions in their pay as high as 30% (R 166-168). And it is further admitted that the membership of Local 68, at its regular meeting on Monday evening, March 28, 1949, voted to reject the company's offer and to continue negotiations (R 146, 193; Ex. E proffered in evidence, R 201)[5].

The committee refused to sign the contract the company had prepared (Ex. A of the complaint, Ex. 3 in evidence, R 76). Negotiations were continued during the week but no agreement could be reached (R 103-104). Local 68 struck the plant the following Monday, April 4, 1949 (Ex. F, R 243).

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[5] Petitioner's statement that Local 68 at its meeting on Monday, March 28, 1949, voted to "rescind" the action of the company's employees (Pet. for Cert., pg 9) is a patently misleading statement. It was merely a statement Rentschler testified was made to him by McCune at a meeting held on March 29, 1949 (R 103).

ARGUMENT

1. No Evidence Was Submitted That The Alleged Contract Was Accepted.

The principle issue involved in the trial of the instant case was simply whether or not on March 26, 1949 Respondents had entered into a contract with Petitioner. Both the District Court and the Court of Appeals found that there was no evidence to support Petitioner's contention that the alleged contract had been entered into.

The District Court found a lack of evidence in two respects; first, that there was no evidence in the record that Respondents had accepted the alleged contract (R 299-300); and, second, that the undisputed evidence established that the parties did not contemplate an oral contract and were not to be bound unless and until the contract was reduced to writing and signed. (R 300-301).

The Court of Appeals affirmed the District Court on the grounds that there was no evidence in the record that Respondents had accepted the alleged contract. (R 325). The Court of Appeals held, as a further grounds for affirmance, that the Ohio Statute of Frauds (Ohio General Code, Section 8621), providing that no action shall be brought upon an agreement that is not to be performed within a year from the making thereof unless it is in writing and signed by the parties to be charged, applied and barred recovery on the alleged contract. (R 327).

There definitely is no error in the decision of the Court of Appeals in affirming the District Court on the grounds that the record is devoid of evidence that Respondents accepted the alleged contract.

Petitioner's entire case turned on the 'phone call made on Saturday, March 26, 1949, by a memeber of Local 68's

negotiating committee (McCune) to the Petitioner. The purpose of the 'phone call was to report to Petitioner on the action taken by Petitioner's employees at a meeting they had held on Friday evening, March 25th. (Ex. 8, pg 98) Petitioner's witness, McDaniel, testified he was advised in this 'phone call that "the boys had agreed to our proposal". (R 66) This statement Petitioner contends consummated the alleged contract.

It is agreed, however, by all parties, that the meeting held on March 25th was not a meeting of Respondent Local 68, but a meeting of only those members of Local 68 who worked at Petitioner's foundry. (R 143, 164, 187-188, 212, 230) It is also undisputed and agreed to by all parties that the Respondent Local 68 rejected the company's proposal at its regular meeting held on Monday night, March 28th. (R 146, 193; Ex. E proffered in evidence R 189). Thus no contract could have been accepted by the Respondent Local 68 since the uncontradicted evidence establishes that Local 68 would not be bound by any contract unless and until accepted by a majority vote of the members of Local 68. That condition was known to and accepted by Petitioner, as conclusively demonstrated by Petitioner's Exhibit 7, pg 5, containing a statement made by Mr. Rentschler to Local 68's bargaining committee in which he quoted from a letter sent to each of the employees as follows:

> "Agreement with the Molders Union. Last Thursday the Company and the *Union Committee of Local 68* with the District Representative of the International Molders and Foundry Workers Union came to an agreement on a new one-year contract effective Monday, March 14. The agreement is to be presented to the *Local Union membership* for ratification and the

> meeting has been set up for Friday afternoon, March 11, for the Company and the Union Committee with the District Representative to sign."

Mr. Rentschler followed this quotation from his letter by emphasizing that it was his understanding that a contract could be made only upon its acceptance or ratification by the membership of Local 68. He used the following language: "Now we say there subject to ratification of the union membership" (Ex. 7, pg 5).

The record is thus clear and uncontradicted that no contract was accepted since the membership of Local 68 not only refused to accept the company's offer but rejected it (R 146, 193; Ex. E proffered in evidence, R 201).

Petitioner's comments (Pet. for Writ, pgs 12-13) that there was ample evidence in the record that the vote of the employees' meeting on Friday night, March 25th, was to be decisive is untenable.

In support of its statement, Petitioner first states that the Constitution and By-Laws of the Respondent Unions do not require acceptance of a contract by the membership of a local union. This is directly contrary to the facts as shown in Exhibit 20, Section 66, page 34, wherein reference is constantly made to meetings of the membership of local unions to determine wage demands, actions to be taken on employers' proposals, etc.

Second, Petitioner refers to testimony of Rentschler and Fracker (R 203-204) that no one told them that ratification by the membership of Local 68 was necessary to consummate a contract. It would hardly seem necessary that these officials of Respondent would have to be told that Local 68 would have to accept or ratify the contract since (1) they certainly knew they were negotiating with

Local 68 (as evidenced by the title on the covers of Exhibits 4, 5, 6, 7 and 8); (2) since they certainly knew that any contract entered into would be entered into with Local 68 (as evidenced by Exhibits 3 and 19); (3) since they certainly knew that any proposed agreement was to be presented to the membership of Local 68 for ratification prior to its becoming a binding contract (as established by the letter Mr. Rentschler had written to his employees) (Ex. 7, pg 5); and (4) the Exhibits 4, 5, 6, 7 and 8 established that Mr. Rentschler was told over and over again, and acknowledged over and over again, that only the majority of the general membership of Local 68 could bind the Union to a contract. (References to pages in Exhibits, 4, 5, 6, 7 and 8 are voluminous and appear supra pg 7).

Third, Petitioner refers to testimony of McCune, Sample, the International President of the Respondent International Union, and Harding, a member of Local 68's negotiating committee (R 171, 199-200, 145). Here Petitioner has resorted to the age-old trick of attempting to take statements from their context to give them a meaning never intended and, indeed, exactly contrary to what was actually stated. The testimony referred to by Petitioner is simply testimony to the effect that the Friday night meeting on March 25th was not a meeting of Local 68 but of only the company's employees, and the company's offer was going to be submitted to the company's employees for their approval or rejection prior to submitting the proposal to the membership of Local 68.

The testimony of these witnesses is clear and certain that the membership of Local 68 would have to accept or ratify any action of the committee, or company's employees, before a contract could be made with Local 68 (R 175, 176, 198, 145).

Naturally, if the employees of the company found any proposal from the company acceptable to them, the membership of Local 68 would be strongly inclined to accept, if not, not.

2. The Alternative Basis For Affirmance Is In Accord With Decisions Of This Court and Does Not Conflict With Other Decisions.

The second, or alternative, basis upon which the Court of Appeals affirmed the District Court, i.e., the Ohio Statute of Frauds, is clearly in accord with the decisions of this Court and the decisisons of other United States Courts of Appeals.

It has long been established that where Congress is silent in adopting federal legislation, state statutes of a remedial nature apply. As stated by this Court in the case of *Holmberg* v. *Armbrecht* (327 U.S. 392 at 395; 66 S. Ct. 582; 90 L. Ed. 743):

> "Apart from penal enactments, Congress has usually left the limitation of time for commencing actions under national legislation to judicial implications. As to actions at law the silence of Congress has been interpreted to mean that it is federal policy to adopt the local law of limitation. (cases cited).

Further, state laws are superseded by federal legislation only in those instances where Congress has clearly indicated its intent that state laws are to be superseded, or in those instances and to the extent that state laws conflict and prevent operation of federal acts. (*Minnesota Rate Cases,* 230 Ct.S. 352; 33 S.Ct. 729; 57 L.Ed. 1511; *Allen Gradley Local* 1111 v. *Wisconsin Employment Relations Board,* 315 U.S. 740; *International Union UAW-AFL* v. *Wiscon-*

sin Employment Relations Board, 336 U.S. 245; 59 S.Ct. 516; 93 L.Ed. 651 *Republic Pictures Corp.* v. *Kappler,* 151 Fed (2nd) 543, affirmed 327 U. S. 757).

The silence of Congress in enacting Section 301 of the Labor Management Relations Act, 1947 certainly indicates an intent that state laws of a remedial nature apply for it is inconceivable that Congress intended to wipe out, by implication only, historic state statutes of frauds and limitations.

Petitioner's contention (Pet. for Cert., pg 10) that the decision of the Court of Appeals in the instant case, insofar as it holds the Ohio Statute of Frauds applicable, conflicts with the decision of the United States Court of Appeals for the Third Circuit in the case of *Rothenberg* v. *Rothstein* (183 F (2d) 524) is without merit. In the Rothenberg case the Court held that the Pennsylvania Sales Act would be applicable "if the federal act has adopted it as a limitation upon the remedy granted by that act," and went on to find that Congress had not intended the state act to apply.

The federal legislation involved in the Rothenberg case was an entirely different act than that involved in the instant case with the Court finding that Congress intended the Federal Perishable Agricultural Act (7 USC 499 et seq) to supersede state laws. No such intent, however, can be found in the Labor Management Relations Act, 1947.

Nor is Petitioner's contention (Pet. for Cert., pg 9) tenable that compliance with state statutes of frauds is unnecessary under the Labor Management Relations Act 1947 because Section 8 (d) of the Act makes signature of collective bargaining agreements mandatory.

Section 8 (d) is in Title I of the Act, and no private rights but only public rights are created by Title I of the

Act (*Schattle* v. *International Association of State Employees,* 70 Fed. Sup. 1008, affirmed (CCA 9) 165 F (2) 216, Cert. denied 334 U. S. 812).

Further, insofar as the instant case is concerned, the National Labor Relations Board has already found that Respondents herein did not violate Section 8 (d) of the Act by refusing to sign the contract Petitioner is herein alleging Respondents had entered into. The Board found the contract was not accepted by Respondents, *In re International Molders & Foundry Workers Union of North America, (A. F. of L.) and International Molders & Foundry Workers Union of North America, Local* 68 v. *The Hamilton Foundry & Machine Co.* (1950) 91 NLRB 139.

3. No Question Of Interpretation Of Language Of Federal Law is Involved.

Petitioner contends that the instant case raises a question concerning the interpretation of Sections 2 (13), 301 (b) and 301 (e) of the Labor Managment Relations Act, 1947 which define the liability of a labor organization for the acts of its agents. That question, however, is not involved in the instant case and was never an issue during the trial of the case nor on appeal. Respondents concede that under the provisions of the Act a labor union is bound by the acts of its agents.

Section 301 (b) of the Act provides that a labor organization "shall be bound by the acts of its agents."

Sections 2 (13) and 301 (e) provide "In determining whether any person is acting as an 'agent' of another person so as to make such other person responsible for his acts, the question as to whether the specific acts performed

were actually authorized or subsequently ratified shall not be controlling."

This language in the Act merely defines the common law agency relationship as distinguished from the definition of agency contained in the Norris-LeGuardia Act (47 Stat 71, 29 U.S.C. 106).

Proof of agency under the Act must be made in the same manner that such proof is required in the ordinary law suit.

In the Statement of The Managers on The Part of The House the following comment is found on the agency test provided for in the Act:

> "Hence, under the conference agreement, as under the House Bill, both employers and labor organizations will be responsible for the acts of their agents *in accordance with the ordinary common law rules of agency (and only ordinary evidence will be required to establish the agent's authority)*." (Vol. 1, Legislative History, Labor Management Relations Act, 1947, pg 540.)

(See also Congressional Record, Senate, June 5, 1947, page 6598, 6599 (Vol. 2, Legislative History of the Labor Management Relations Act 1947, pgs 1535, 1573); Congressional Record, Senate, June 6, 1947, page 6680, (Legislative History Vol. 2, pg. 1599); Congressional Record, Senate, June 6, 1947, page 6693, (Vol. II, Legislative History, pg. 1617); and Congressional Record, Senate, June 12, 1947, pg 7000 (Vol. II, Legislative History, page 1622).)

The uncontradicted evidence in the instant case establishes overwhelmingly that neither McCune nor any other member of Local 68's negotiating committee, nor any segment of Local 68, had the authority to bind Local 68 to a contract. Their authority was limited to negotiating for

contract terms. Only the membership of Local 68, by majority vote, could bind the union and Petitioner knew of and accepted that restriction of the authority of the negotiating committee. (See Supra, pg 10, also Ex. 4, pgs 91-92, 126; Ex. 5, pgs 205, 211, 221, 223, 224, 271, 274, 301, 315, 316, 319; Ex. 6, pgs 3, 4, 34, 65, 66, 75, 83-84; Ex. 7, pgs 3, 4-5, 6, 8, 20, 46, 47; Ex. 8, pgs 2, 21, 61, 62, 63).

Thus it is clear that Petitioner knew it was dealing with a committee of limited authority and one that had no authority to bind its principal to a contract. No question involving the interpretation of Sections 2 (13), 301 (b) and 301 (a) of the Act can be involved.

The decision of the United States Court of Appeals for the Seventh Circuit in the case of *NLRB* v. *Acme Mattress Company* (CCA 7) (1951) 192 F (2) 524, does not conflict with the decision of the Court of Appeals in the instant case concerning proof of agency under the Labor Management Relations Act, 1947 (Pet. for Cert. pg. 11). In the Acme Mattress Company case the Court found that "No limitation was communicated to the Company with respect to Cline's (the union's agent) apparent authority to impart to the Company the terms and conditions upon which the International would execute the contract and terminate the strike," and, since Cline had apparent authority to contract, the Court held the union bound by his acts.

In the instant case, however, the limitation on the authority of the committee was imparted to the Petitioner and acknowledged and accepted by the Petitioner. Therefore, there is no conflict between the Court of Appeals' decision in the instant case and the decision of the Seventh Circuit in the Acme Mattress Company case.

(See also Harroll-Owens Co. and International Association of Machinists, Lodge 1506 (92 NLRB No. 32).)

4. Interpretation Of Rule 10(c) Federal Rules Of Civil Procedure Is Not Involved.

Petitioner's contention that the instant case presents an important Federal question relating to the meaning of Rule 10 (c) of the Federal Rules of Civil Procedure is untenable.

In its Amended More Definite Statement Of Claim, Petitioner alleged that the termination of the contract it was relying upon was midnight March 26, 1950. It attached to its pleading an Exhibit A (Ex. 3). This Exhibit 3 provides that it is to be in effect until March 27, 1950, and is to renew for each succeeding year thereafter in the absence of notice to the contrary.

The Court of Appeals held:

> *"In addition to there being no evidence about a contract with a termination date of midnight March 26, 1950,* the exhibit contradicted the allegations of the Amended Complaint and was controlling." (R 328)

There was not one word or shred of evidence introduced concerning a contract to terminate midnight March 26, 1950, and, as found by the Court of Appeals, all of the evidence was to the effect that if the alleged contract had been entered into its expiration date of March 27, 1950 was intended to be a day included in the contract. Therefore, it could not be performed within a year from the date Petitioner alleged it was entered into.

The Court of Appeals' statement that "Appellant's (Petitioner) pleadings and evidence provide much confusion about the length of time covered by the alleged contract involved in this case" (R 327) is certainly borne out and conclusively demonstrates that from the very inception of the instant case Petitioner has been grasping at straws, and

its Petition for Writ of Certiorari is completely lacking in substance.

Petitioner has claimed in successive pleadings and commitments as its contract:

> (1) A contract reduced to writing and entered into March 26, 1949, to terminate midnight March 26, 1950. (More Definite Statement Of Claim) (R 6-7)
>
> (2) A contract entered into March 30, 1949 effective until March 27, 1950, and year to year thereafter. (Exhibit A to More Definite Statement (Ex. 3))
>
> (3) An oral contract entered into to terminate midnight March 26, 1950. (Amended More Definite Statement of Claim, R 22)
>
> (4) A written document. (Exhibit A to Amended Statement of Claim (Ex. 3))
>
> (5) A written document embodying an agreement which had been reached, which takes Petitioner back to its Exhibit A as that was the document prepared after March 26, 1949 (R 120-121). (Pet. for Cert., Pg 5)
>
> (6) A contract entered into on March 11, 1949 effective until March 13, 1950, although that proposal admittedly was rejected (R 109). (Ex. 19, Pet. for Cert., Pg 14)
>
> (7) A contract entered into on March 26, 1949 effective until March 13, 1950. (Pet. for Cert., Pg 14)

Thus Petitioner has shifted from alleged contract to alleged contract as appeared expedient.

No matter how often Petitioner shifted its position, it could prove no contract because, in fact, no contract was entered into.

CONCLUSION

The decision of the United States Court of Appeals for the Sixth Circuit is based upon ordinary principles of contract law with no probability of error. The decision does not conflict with the decision of this or any other court, nor does it raise any important or fundamental questions. The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

ROBERT A. WILSON,
1103-4 Union Trust Bldg.,
Cincinnati (2), Ohio.
LONG & BLOOM,
BERT H. LONG,
MILTON M. BLOOM,
909 Atlas Bank Bldg.,
Cincinnati (2), Ohio.

May 14, 1952.

APPENDIX A

STATUTES AND RULES

OHIO GENERAL CODE, SECTION 8621.

"No action shall be brought whereby to charge the defendant, upon a special promise, to answer for the debt, default or miscarriage, of another person; nor to charge an executor or administrator upon a special promise to answer damages out of his own estate; nor to charge a person upon an agreement made upon consideration of marriage, or upon a contract or sale of lands, tenements, or hereditaments, or interest in, or concerning them nor upon an agreement that is not to be performed within one year from the making thereof; unless the agreement upon which such action is brought, or some memorandum or note thereof, is in writing, and signed by the party to be charged therewith, or some other person thereunto by him or her lawfully authorized."

SECTION 301, LABOR MANAGEMENT RELATIONS ACT (29 USC 185)

"(a) Suits for violation of contracts between an employer and a labor organizaton representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

"(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom

it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

"(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

"(d) The service of summons, subpoena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

"(e) For the purposes of this section, in determining whether any person is acting as an 'agent' of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling. June 23, 1947, 3:17 p.m., E.D.T., c. 120; Title III, § 301, 61 Stat. 156."

SECTION 2(13), LABOR MANAGEMENT RELATIONS ACT 1947 (29 USC 152(13).)

"In determining whether any person is acting as an 'agent' of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling. As amended June 23, 1947, 3:17 p.m., E.D.T., c. 120, Title I, § 101, 61 Stat. 137."

SECTION 8(d), LABOR MANAGEMENT RELATIONS ACT 1947 (29 USC 158 (d).)

"(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: *Provided*, That where there is in effect a collective bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification —

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, and provided no agreement has been reached by that time; and

(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later.

"The duties imposed upon employers, employees, and labor organizations by paragraphs (2) - (4) of this subsection shall become inapplicable upon an intervening certification of the Board, under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of Section 159 (a) of this title, and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of Sections 158-160 of this title, but such loss of status for such employee shall terminate if and when he is reemployed by such employer. As amended June 23, 1947, 3:17 p.m., E.D.T., c. 120, Title I, § 101, 61 Stat. 140; Oct. 22, 1951, c. 534, § 1 (b), 65, Stat. 601."

RULE 10(c), FEDERAL RULES OF CIVIL PROCEDURE.

"Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes."